Filed 4/26/18 In re L.H. CA1/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re L.H., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. L.H., Defendant and Appellant.	A154879 (Contra Costa County Super. Ct. No. J16-00698)

Following a probation violation hearing, the juvenile court found appellant violated his probation because he smoked marijuana at home. Appellant contends insufficient evidence supports the juvenile court's finding. We disagree and affirm the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. *Procedural Background*

The Sonoma County District Attorney filed an amended wardship petition (Welf. & Inst. Code, § 602) alleging appellant, age 14, committed assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)) and battery with serious bodily injury (Pen. Code, § 243, subd. (d)). Pursuant to a plea agreement, appellant admitted the battery allegation in exchange for dismissal of the assault allegation. The matter was transferred to Contra Costa County for disposition. Contra Costa accepted the transfer.

At the disposition hearing, the court adjudged appellant a ward of the court and placed him in the Hanna Boys Center and in his legal guardian's home.[1] The court also imposed various terms and conditions of probation, including appellant was "not to knowingly use or possess any illegal drugs, including marijuana and any synthetic marijuana" and to "Submit to drug and alcohol testing as directed by DPO [(deputy probation officer)]."

Less than a year later, the probation department filed a notice of probation violation hearing alleging appellant violated probation because he possessed marijuana at the Hanna Boys Center, was terminated from the program, and tested positive for THC. Appellant subsequently admitted violating probation. At the disposition hearing, appellant was placed with B.K. on home supervision for 120 days.

A second notice of probation violation hearing was filed with the court one year later alleging B.K. contacted the probation department to report appellant was smoking marijuana in her house. Appellant denied the allegation, and the matter was set for a contested hearing.

B. ***Probation Violation Hearing***

B.K. was a reluctant witness who tried to avoid testifying by invoking the Fifth Amendment because she did not "feel like" she should be testifying against appellant. B.K. eventually testified appellant was living with her in April 2018. After the prosecutor asked B.K. if she had contacted appellant's probation officer, Andrea Brown, in late April to report appellant had been smoking marijuana in her home, B.K. responded, "I contacted her on an occasion. I don't know if it's that day." According to B.K., she contacted Brown "[p]ossibly" in April. When asked by the prosecutor to explain what led her to believe appellant had been smoking marijuana, B.K. replied she recognized the "[a]roma" of marijuana. Notably, she also said no one else was in the house except she and appellant. B.K. believed the smell of the marijuana was emanating

[1] Appellant's sister, B.K., is his legal guardian. Appellant considered King as his "mother" and referred to B.K.'s daughters as his sisters.

from upstairs where all the rooms, including appellant's room, are located. After B.K. went upstairs, she discovered the door to appellant's room was open; however, she found appellant in "my other daughter's room." When she questioned appellant about the smell of marijuana, he did not "say anything at that point." B.K. did not find any substance she thought was marijuana.

During cross-examination, B.K. said the incident occurred so long ago she could not recall whether her three daughters were also at home the day she smelled marijuana. B.K. further acknowledged she did not observe appellant smoking marijuana, nor did he admit to smoking marijuana.

Andrea Brown testified B.K. contacted her on April 23, 2018 to report appellant was smoking marijuana in her home on Saturday, April 21. B.K. informed Brown she believed appellant was smoking marijuana because "her house smelled like marijuana," and she "wanted him out of the house." When Brown contacted appellant, he denied smoking marijuana in the house, claiming "his sister's [(B.K.'s daughter)] boyfriend" had smoked marijuana in the house that day. Brown scheduled an appointment to drug test appellant on May 3, but he did not appear.

After hearing all the evidence, the juvenile court ruled: "If this were a case where the burden were beyond a reasonable doubt, I would be with the Defense, with the minor in this case. I don't think there's proof beyond a reasonable doubt that he was the person who smoked the marijuana but I think that there is proof by a preponderance that he smoked marijuana that day." In explaining its decision, the court noted B.K. was in the house, she knew who was there, she smelled the distinct odor of marijuana, appellant was in the house upstairs, and she did not testify "the sister [(B.K.'s daughter)] was in fact upstairs or even there." And the court further observed, B.K. "was sure enough and upset enough that she called the probation officer about it and wanted him out of the house. That does not suggest that she had any question in her mind at that time that it was maybe the sister [(her daughter)]**,** maybe the sister's [(her daughter's)] boyfriend. She was convinced as the person in the house who smelled it and knew when he came in that it was him. And then it's compounded by the fact that within a day or two of that, he was

told by the probation officer that she was going to have to test him, scheduled a test, and he didn't show up, which does show consciousness of guilt." Considering the evidence in its totality, the court concluded there was a preponderance of evidence appellant "did in fact smoke marijuana in the house that day."

II. DISCUSSION

Appellant claims there was insufficient evidence he smoked marijuana in violation of his probation term prohibiting him from knowingly using or possessing any illegal drugs, including marijuana. No so. Substantial evidence supports the juvenile court's finding appellant violated his probation.

A. *Burden of Proof and Standard of Review*

"It has been long recognized that the Legislature . . . intended to give trial courts very broad discretion in determining whether a probationer has violated probation." (*People v. Rodriguez* (1990) 51 Cal.3d 437, 443.) "A trial court may revoke mandatory supervision when it has reason to believe the person under supervision has committed another offense or otherwise has violated the terms of supervision. [Citation.] The prosecution must prove the grounds for revocation by a preponderance of the evidence." (*People v. Buell* (2017) 16 Cal.App.5th 682, 687.) "[P]reponderance of the evidence" is "evidence which as a whole shows that the fact sought to be proved is more probable than not." (Black's Law Dict. (6th ed. 1990) p.1182, col. 1.)[2]

We review the juvenile court's findings for substantial evidence. "We consider 'whether upon review of the entire record, there is substantial evidence of solid value, contradicted or uncontradicted, which will support the trial court's decision.' [Citation.] Substantial evidence is evidence that is reasonable, credible, and of solid value. [Citation.] We 'give great deference to the trial court and resolve all inferences and intendments in favor of the judgment. Similarly, all conflicting evidence will be resolved in favor of the decision.' " (*Buell*, at p. 687.) Additionally, "we note that issues of fact

[2] Welfare and Institutions Code section 777, subdivision (c) provides for the same preponderance of evidence standard in juvenile cases to prove probation violations as in adult revocation proceedings. (*In re Eddie M.* (2003) 31 Cal.4th 480, 501.)

and credibility are the province of the [juvenile] court." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193, disapproved on other grounds in *In re R.T.* (2017) 3 Cal.5th 622, 628.)

B. *Substantial Evidence Supports the Juvenile Court's Ruling*

Here, giving great deference to the juvenile court and resolving all inferences and conflicts in the evidence in favor of the judgment, we conclude there is substantial evidence to support the court's finding it was more probable than not appellant was the individual smoking marijuana in his home as reported by B.K. As revealed in B.K.'s testimony on direct examination, she and defendant were the only individuals in the home when she smelled the distinct odor of marijuana emanating from upstairs. The door to appellant's room was open though he was in B.K.'s "other daughter's room." When B.K. questioned appellant about the marijuana odor, he did not say anything. Additional evidence, moreover, buttresses the court's ruling. Importantly, though B.K. was a reluctant witness, the probation officer, Andrea Brown, testified she was contacted by B.K. who reported appellant had been smoking marijuana two days earlier and she wanted him out of her home.[3] And appellant's failure to appear at the scheduled drug test further supports the court's decision to revoke probation because his failure to drug test is evidence of his consciousness of guilt. In sum, considering all the evidence presented to the juvenile court, substantial evidence supports its finding, under the preponderance of evidence standard, that appellant violated probation by smoking marijuana at home.

Relying on *In re Elisabeth H.* (1971) 20 Cal.App.3d 323, appellant argues the prosecution's evidence merely established the undisputed fact that someone was smoking marijuana in B.K.'s home. There, the defendant was one of five minors in a car with its bright lights illuminated, parked on a road at 4:00 a.m. When a police officer signaled the vehicle to dim its lights, the driver did not do so, and the officer pulled alongside. Upon seeing the police car, the driver of the other vehicle abruptly drove off. The officer

[3] The trial court admitted Brown's testimony under the prior inconsistent statement exception to the hearsay rule. (Evid. Code, § 1235.) Appellant does not challenge the admission of Brown's testimony on appeal.

eventually pulled over the vehicle. As the officer approached the car, the driver rolled down the window. The officer saw smoke in the car and smelled the strong odor of burned marijuana. After arresting the minors for curfew violation, the officer searched the vehicle finding marijuana in a jacket on the front seat. During the search, one of the minors threw a plastic soap dish containing marijuana and paraphernalia into an adjacent field. There was no direct evidence the defendant had been smoking marijuana, was under the influence of marijuana, had marijuana in her possession, or had marijuana debris on her person. (*Id.* at pp. 326–327.) The appellate court concluded the evidence was insufficient to support a finding the defendant possessed marijuana. (*Id.* at pp. 330–331.) In contrast, in this matter, B.K. initially testified she and appellant were the only persons in the house at the time she smelled marijuana. And while Brown testified that when she contacted appellant, he claimed "his sister's boyfriend" had smoked marijuana in the house, B.K. never said one of appellant's sisters or one of their boyfriends were in the house that day, only later indicating in cross-examination she could not recall who else was there. If anything, appellant's comment to Brown that the boyfriend had smoked marijuana confirms B.K.'s testimony her home smelled of marijuana on the relevant day. Finally, *Elisabeth H.* concerned whether the prosecution had proven possession of marijuana beyond a reasonable doubt to sustain a wardship petition, whereas here, the juvenile court applied the lesser standard of preponderance of the evidence to a violation of a probation term.

Appellant next argues an absence of evidence cannot satisfy the burden of proof, citing *Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 655. *Roddenberry* concerned whether certain profits generated by Star Trek projects created after Gene Roddenberry and his first wife divorced belonged to his second wife and the Roddenberry estate, or to the first wife. (*Id.* at p. 640.) The issue was whether the appellate court should accept the first wife's argument her "award must be affirmed because there is no evidence of the negative: no evidence that the parties agreed *not* to pay her such profits." (*Id.* at p. 655.) Finding the first wife "essentially offered only her naked demand, inconsistent with both the settlement agreement and judgment, to half of

all postdivorce Star Trek income," the appellate court found substantial evidence did not support her claim. (*Id.* at pp. 656–657.) Unlike *Roddenberry*, however, in the instant case, the juvenile court did not rely on "no evidence of the negative," instead drawing reasonable inferences from the totality of the evidence to conclude appellant smoked marijuana upstairs on the day in question.

In sum, we find substantial evidence supports the juvenile court's finding appellant violated the terms of his probation by smoking marijuana.

III. DISPOSITION

Accordingly, the judgment is affirmed.

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Margulies, J.

We concur:

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Humes, P. J.

_____
Sanchez, J.

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